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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 RICHARD L. RYNEARSON, III

NO. 3:17-cv-5531

10 Plaintiff,

11 v.

PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION TO DISMISS

12 ROBERT FERGUSON, Attorney General of
13 the State of Washington,

NOTE ON MOTION CALENDAR:
September 22, 2017

14 and

15 TINA R. ROBINSON, Prosecuting Attorney
16 for Kitsap County,

ORAL ARGUMENT REQUESTED

17 Defendants.
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I. INTRODUCTION

Plaintiff Richard Rynearson is seeking to vindicate his First Amendment rights in federal court under a federal statute, 42 U.S.C. § 1983. His right of access to this federal forum is not precluded by *Younger* abstention, because this lawsuit does not seek to enjoin, or otherwise interfere with, any pending state proceedings.

The plaintiff in the state case *Moriwaki v. Rynearson*,¹ Clarence Moriwaki, is not a party to this federal case; neither is the state court judge or any other state court trial participant. Likewise, the prosecutor defendants in this case are not parties to *Moriwaki*. An injunction in this case will not have collateral estoppel effect in *Moriwaki*; it will not even be binding precedent. At most, the court's decision in this case may be persuasive authority in the appeal of that state-court decision—but, if so, then it will simply be useful input to the state's decisionmaking process, not interference with that process.

Moreover, the state proceeding is not a criminal case. It is not a “quasi-criminal” case, such as a civil enforcement measure initiated by state officials. And this lawsuit does not seek to interfere with “the core of the administration of a State’s judicial system,” *ReadyLink Healthcare v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014) (citation omitted), such as by trying to enjoin a contempt proceeding or the enforcement of a bond requirement. None of the “exceptional categories” of cases that justify *Younger* abstention, *Sprint Commc’ns, Inc. v. Jacobs*, 134 S. Ct. 584, 592 (2013), are thus present here.

Younger abstention calls for federal courts to abstain from directly interfering in *ongoing* state criminal prosecutions, *Younger v. Harris*, 401 U.S. 37 (1971), and a few closely related matters. In this case, Rynearson is facing *future* criminal prosecution, a situation “where *Younger* does not apply.” *Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 885 (9th Cir. 2011). And the “garden variety civil litigation between private parties” involved in *Moriwaki* is

¹ The opinion in that case is reproduced at Decl. of Darwin P. Roberts, ECF No. 24, exh. B, and the case is mentioned in Decl. of Richard Lee Rynearson, III, ECF No. 4, at 7, ¶ 14.

not state enforcement action and cannot trigger *Younger* abstention. *Logan v. U.S. Bank Nat. Ass’n*, 722 F.3d 1163, 1168 (9th Cir. 2013).

II. LAW AND ARGUMENT

Generally speaking, “the federal courts’ obligation to adjudicate claims within their jurisdiction [is] ‘virtually unflagging.’” *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359 (1989) (citation omitted). Declining to exercise jurisdiction and invoking *Younger* abstention is thus reserved for “exceptional categories” of cases. *Sprint*, 134 S. Ct. at 592. “In civil cases, therefore, *Younger* abstention is appropriate only when the state proceedings:

“(1) are ongoing,

“(2) [(a)] are quasi-criminal enforcement actions *or*

[(b)] involve a state’s interest in enforcing the orders and judgments of its courts,

“(3) implicate an important state interest, *and*

“(4) allow litigants to raise federal challenges.”

ReadyLink, 754 F.3d at 759 (paragraph breaks and emphasis added). Moreover, even if all four of these elements are satisfied, there is another requirement: (5) for *Younger* to apply, “the federal action would [have to] have the practical effect of enjoining the state proceedings.” *Id.*

But here a federal injunction against the defendant prosecutors would not “have the practical effect of enjoining the state proceedings” brought by plaintiff Moriwaki, a private citizen (so element 5 is not satisfied). The state proceedings are not “quasi-criminal enforcement actions” (so element 2(a) is not satisfied). And the state proceedings do not involve the “state’s interest in enforcing” court judgments (so element 2(b) is not satisfied).

A. An injunction in this case would not enjoin the *Moriwaki* civil proceedings

In the typical *Younger* abstention case, a plaintiff tries to block a state proceeding by suing someone involved in that proceeding—the prosecutor, the plaintiff, the judge, a witness, or some other key actor. The goal is to use the federal court’s power to stop the state proceeding in its tracks. Nothing of the sort is present here.

1 First, the only plaintiff in the state case—Moriwaki—is not a party in this federal case.
2 Ryneerson is not seeking an order compelling Moriwaki to do or not do anything. A decision in
3 this case would not even collaterally estop Moriwaki from litigating the same issues in state
4 court. *In re Moi*, 184 Wash. 2d 575, 580 (2015). *Younger* abstention might be unjustified even if
5 such issue preclusion were possible, *Potrero Hills Landfill*, 657 F.3d at 883 n.8, but it is
6 especially unjustified when issue preclusion does not apply.

7 Second, any order in this case would not be precedent binding on Washington state
8 courts. *See, e.g., Matter of Paschke*, 80 Wash. App. 439, 448 n.5 (1996) (noting that the federal
9 court’s determination of Washington state statute’s constitutionality “is not binding on
10 Washington courts”); *Matter of Grisby*, 121 Wash. 2d 419, 430 (1993) (“While we always give
11 careful consideration to Ninth Circuit decisions, we are not obligated to follow them, and do not
12 do so in this case.”).

13 Third, because Washington follows the collateral bar rule, an injunction barring
14 prosecutors from prosecuting RCW 9.61.260(1)(b) violations as such would not block them from
15 prosecuting Ryneerson under a separate statute, RCW 26.50.110, for violating the *Moriwaki*
16 injunction. “The collateral bar rule prohibits a party from challenging the validity of a court order
17 in a proceeding for violation of that order.” *City of Seattle v. May*, 171 Wash. 2d 847, 852
18 (2011).

19 Fourth, the civil statute authorizing the injunction in *Moriwaki*, RCW 7.92.100, is
20 different from the criminal statute challenged here, RCW 9.61.260(1)(b) (though a violation of
21 RCW 9.61.260(1)(b) is one possible predicate for the application of RCW 7.92.100). “[A]
22 pending state judicial proceeding does not come within *Younger* unless the federal plaintiff is
23 being prosecuted in state court under the *same law* that is challenged in federal court.” *Wiener v.*
24 *Cty. of San Diego*, 23 F.3d 263, 266 (9th Cir. 1994) (emphasis added). In *Weiner*, the Ninth
25 Circuit held that *Younger* abstention was improper when the plaintiff was being prosecuted in
26 state court under a different ordinance than the one being challenged in federal court, even when
27 the two ordinances had identical aims and constitutional problems, and when the ordinance

1 challenged in federal court was just a permanent version of the temporary ordinance being
2 challenged in state court.

3 The abstention cases Defendants cite, Defs.’ Resp. to Mot. for Prelim. Inj. at 8-10, are
4 thus inapposite. Rynearson does not seek to enjoin an ongoing criminal prosecution, as plaintiffs
5 sought to do in *Younger*, 401 U.S. at 41 (involving a normal criminal prosecution), or *Juidice v.*
6 *Vail*, 430 U.S. 327, 335-36 (1977) (involving a contempt of court prosecution). Rynearson does
7 not seek to enjoin the enforcement of a state judge’s order against him, as the plaintiffs sought in
8 *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987), and *Machetta v. Moren*, No. 4:16-cv-2377,
9 2017 WL 2805192, at *1-4 (S.D. Tex. Apr. 13, 2017) (a suit filed against the state court judges
10 themselves). Rynearson does not seek to order a state judge to recuse himself from a state case,
11 as the plaintiff sought in *Thomas v. Piccione*, No. 13-425, 2014 WL 1653066, at *3 (W.D. Pa.
12 Apr. 24, 2014). Rynearson does not come to federal court suing the same party he litigated
13 against in state court, seeking to block the judgment that the party had obtained, as was the case
14 in *Minette v. Minette*, 162 F. Supp. 3d 643, 652 (S.D. Ohio 2016), or seeking to order the party to
15 do something (such as surrender a passport), as plaintiff sought to do in *Karl v. Cifuentes*, No.
16 15-2542, 2015 WL 4940613, at *1-5 (E.D. Pa. Aug. 13, 2015).

17 *Younger* abstention is thus inappropriate—even apart from the reasons given in Parts II.B
18 and II.C below—since such abstention is proper only when “the federal action would have the
19 practical effect of enjoining the state proceedings.” *ReadyLink*, 754 F.3d at 759.

20 **B. The *Moriwaki* lawsuit is not a “quasi-criminal enforcement action[]”**

21 Even if a federal action would have the practical effect of enjoining state proceedings,
22 *Younger* abstention in a civil case is proper only when the pending state action is a “quasi-
23 criminal enforcement action” (or the requested federal-court injunction would interfere with the
24 core functioning of the state judicial process, which will be discussed in Part II.C). *See*
25 *ReadyLink*, 754 F.3d at 759. But “quasi-criminal enforcement actions” are generally ones filed
26 by state enforcement officials, albeit through the civil process rather than the criminal. The state
27 is “routinely a party” to such proceedings, and often initiates the action “to sanction the federal

1 plaintiff” such as through investigation or filing a formal complaint or charges. *Sprint*, 134 S. Ct.
2 at 592; *see ReadyLink*, 754 F.3d at 759-60 (finding no quasi-criminal proceeding, partly because
3 the litigants in the civil proceeding were “private part[ies]”). Two classic examples of such
4 quasi-criminal enforcement are *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 597 (1975), and
5 *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 433 (1982), cited by
6 Defs.’ Resp. to Mot. for Prelim. Inj. at 8; these involved, respectively, state anti-nuisance
7 proceedings brought by a sheriff and disciplinary proceedings brought by a bar disciplinary
8 board appointed by the state supreme court.

9 *Moriwaki*, on the other hand, is an injunctive proceeding brought by a private citizen.
10 Though it is brought under a specialized statute, that statute simply authorizes the issuance of a
11 civil injunction. Like any other civil injunctive proceeding, its purpose is to prevent certain
12 behavior in the future, not to punish past misbehavior (though, like other civil injunctive
13 proceedings, it may be triggered by an allegation of past misbehavior). RCW 7.92.130(4),
14 7.92.900.

15 Defendants seek to distinguish RCW 7.92.100 from normal injunctions, but the alleged
16 differences mostly prove to be similarities:

17 1. Defendants point out that enforcement of a RCW 7.92.100 injunction “may not
18 ‘be waived by [Moriwaki],’” *see* Defs.’ Resp. to Mot. for Prelim. Inj. at 10 (citation omitted).
19 But that is true of civil injunctions generally; Washington courts, like other courts, have upheld
20 criminal contempt fines imposed for violation of injunctions, even when the parties have agreed
21 to settle the dispute and thus waived enforcement of the injunction. *Mead Sch. Dist. No. 354 v.*
22 *Mead Educ. Ass’n*, 85 Wash. 2d 278, 286 (1975) (upholding a fine in such a situation, because a
23 trial court may “bolster respect for its future orders by attaching a deterrent sanction to
24 violation,” “totally independent of any concern of [the] parties,” and notwithstanding the other
25 party’s willingness to condone the violation). “Under no theory can a party that obtains an
26 injunction bind the issuing court with condonation of contemptuous or illegal acts of those who
27 violate the court's order. To give effect to such a theory would usurp the highest function of our

1 courts.” *Bd. of Junior Coll. Dist. No. 508 v. Cook Cty. Coll. Teachers Union, Local 1600*, 262
2 N.E.2d 125, 129-30 (Ill. App. Ct. 1970) (applying the same rule).

3 2. Defendants stress that violating a RCW 7.92.100 order is punishable as a gross
4 misdemeanor. *See* Defs.’ Resp. to Mot. for Prelim. Inj. at 10, citing RCW 26.50.110. But the
5 violation of any injunction, which would constitute criminal contempt of court, is subject to
6 precisely the same punishment: up to 364 days imprisonment and an up to \$5000 fine. RCW
7 9.92.020; RCW 7.21.040.

8 3. Defendants argue that a RCW 7.92.100 injunction “involves a deprivation of Mr.
9 Ryneerson’s liberty, restricting his freedom of movement and action,” Def. Resp. to Mot. for
10 Prelim. Inj. at 9. But most injunctions deprive the target of his liberty; their whole function is to
11 restrict the target’s freedom of action (or inaction).

12 4. Defendants argue that the state may intervene to defend RCW 9.61.260(1)(b) if
13 Ryneerson challenges it in the appeal of the state injunction proceeding. Def. Resp. to Mot. for
14 Prelim. Inj. at 9 (citing RCW 7.24.110). But that is true of all civil proceedings seeking a
15 declaratory judgment in which a “statute . . . is alleged to be unconstitutional,” RCW 7.24.110.²

16 5. Defendants note that a similar civil injunction could be initiated by a state court
17 under certain circumstances, Def. Resp. to Mot. for Prelim. Inj. at 10; RCW 7.92.160—but those
18 circumstances are absent in this case. Such court-initiated orders are authorized only when the
19 respondent is “charged with or arrested for stalking” and is then released before trial. *See* RCW
20 7.92.160. There was no such charge in *Moriwaki*; the injunction there rested simply on a finding
21 by a preponderance of the evidence that a civil petitioner had met the standards for relief. *See*
22 RCW 7.92.030, 7.92.100.

23 6. Defendants also note that “the law by default requires law enforcement personnel
24 to serve the protection order on its subject,” RCW 7.92.150. But while this default rule is the one
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26 ² Ryneerson does not concede that this statute authorizes intervention in the pending state case,
27 but even if it did, that would not establish any distinction between the state case at issue here and
state civil litigation generally.

1 way in which RCW 7.92.150 injunctions differ from other civil injunctions, the difference is
2 slight. Washington Superior Court Rules, for instance, likewise authorize service of ordinary
3 civil summons and process by law enforcement, though they provide the option of service by
4 private process servers as well, Sup. Ct. R. 4(c). And, like the Superior Court Rules, RCW
5 7.92.150 likewise provides the option of service by private process servers. Moreover, under
6 Washington law, ordinary process issued by district court judges—as well as “all executions and
7 writs of attachment or of replevin”—“shall be served by a sheriff or a deputy.” RCW 12.04.050.
8 Routine service of court orders by law enforcement officials does not transform a civil case into
9 a quasi-criminal proceeding.

10 A quasi-criminal proceeding is just as absent here as it was in *ReadyLink*, where the
11 federal plaintiff brought suit while a state court was reviewing a disagreement between two
12 private parties. 754 F.3d at 760. The Ninth Circuit held that *Younger* abstention was
13 unwarranted, because the “mere ‘initiation’ of a judicial or quasi-judicial administrative
14 proceeding” is not “an act of civil enforcement . . . ‘akin to a criminal prosecution’ in ‘important
15 respects.’” *Id.* at 759-60. Federal courts, the Ninth Circuit recognized, are generally obligated to
16 exercise federal jurisdiction over federal claims; *Younger* offers a limited exception to that
17 obligation, but the limitations on that exception would be rendered “meaningless” if the
18 exception were extended to “every case in which a state judicial officer resolves a dispute
19 between two private parties.” *Id.* at 760. Similarly, the civil injunction here involves a dispute
20 between two private parties, and any dispute-resolving or injunction-issuing role played by state
21 courts does not justify a federal court’s abstention from a distinct federal proceeding raising a
22 constitutional challenge to a distinct criminal law.

23 **C. This case does not involve an attempt to interfere with Washington’s interest in**
24 **enforcing its court orders**

25 *Younger* abstention may also be justified if a federal plaintiff seeks to interfere with “‘the
26 core of’ [a state’s] court system, implicating the ‘State’s interest in enforcing the orders and
27 judgment of its courts,’” *ReadyLink*, 754 F.3d at 759 (citations omitted) (so long as a federal

1 injunction would also effectively enjoin the state proceedings, see Part II.A). But, for reasons
2 stated in Part II.A, this case involves no such interference. Rynearson is not seeking to enjoin the
3 enforcement of the *Moriwaki* order; if he prevails in this case, the *Moriwaki* order would remain
4 enforceable unless it is reversed on appeal, where this court's decision would only have
5 persuasive precedential effect.

6 The cases in which such interference with "core" orders and judgments was found are far
7 removed from this case:

8 "Core" orders involve the administration of the state judicial process—for
9 example, an appeal bond requirement, *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. at
10 12-14, a civil contempt order, *Juidice*, 430 U.S. at 335-36, or an appointment of a
11 receiver, *Lebbos v. Judges of the Superior Court*, 883 F.2d 810, 815 (9th Cir.
12 1989).

13 *ReadyLink*, 754 F.3d at 759. No such interference with a "core" order is present here. There is
14 indeed a state court injunction, but "[t]o establish a vital interest in the state's judicial functions,
15 an abstention proponent must assert more than a state's generic interest in the resolution of an
16 individual case or in the enforcement of a single state court judgment." *Potrero Hills Landfill*,
17 657 F.3d at 886. Rather, a federal proceeding must threaten "the state judiciary's vital functions."
18 *Id.* When a suit "challenges neither the authority of state courts to issue [orders] nor processes
19 for their enforcement once issued," *id.* at 887, *Younger* abstention is inappropriate. And, as Part
20 II.A argued, this case does not challenge the authority of the state court in the *Moriwaki*
21 proceeding. The Supreme Court's "dominant instruction [is] that, even in the presence of parallel
22 state proceedings, abstention from the exercise of federal jurisdiction is the exception, not the
23 rule." *Sprint*, 134 S. Ct. at 593. Defendants have not established that "any of the . . . exceptional
24 categories" permitting abstention apply. *Id.* at 592.

25 III. CONCLUSION

26 Nothing in this case will interfere with the state court judgment in *Moriwaki*. An
27 injunction in this case would not bind the state court or the plaintiff in that case. Such an
injunction would bind only the state prosecutors, who are not parties in *Moriwaki*. Because the
narrowly-crafted *Younger* exception to a federal court's "unflagging obligation" to resolve

1 federal disputes does not apply, this Court must exercise its jurisdiction to resolve the federal
2 dispute presented in this federal case.

3 DATED: September 18, 2017.

Respectfully submitted,

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